

**UNPUBLISHED**

**UNITED STATES COURT OF APPEALS  
FOR THE FOURTH CIRCUIT**

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**No. 20-6436**

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UNITED STATES OF AMERICA,

Plaintiff - Appellee,

v.

ANDRE MATREL ROGERS, a/k/a Black,

Defendant - Appellant.

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Appeal from the United States District Court for the District of South Carolina, at Florence.  
R. Bryan Harwell, Chief District Judge. (4:17-cr-00470-RBH-1; 4:19-cv-01094-RBH)

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Submitted: August 20, 2020

Decided: August 25, 2020

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Before GREGORY, Chief Judge, WYNN, and QUATTLEBAUM, Circuit Judges.

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Affirmed in part and dismissed in part by unpublished per curiam opinion.

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Andre Matrel Rogers, Appellant Pro Se.

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Unpublished opinions are not binding precedent in this circuit.

PER CURIAM:

Andre Matrel Rogers seeks to appeal the district court's order denying relief on his 28 U.S.C. § 2255 motion. The order is not appealable unless a circuit justice or judge issues a certificate of appealability. *See* 28 U.S.C. § 2253(c)(1)(B). A certificate of appealability will not issue absent "a substantial showing of the denial of a constitutional right." 28 U.S.C. § 2253(c)(2). When the district court denies relief on the merits, a prisoner satisfies this standard by demonstrating that reasonable jurists could find the district court's assessment of the constitutional claims debatable or wrong. *See Buck v. Davis*, 137 S. Ct. 759, 773-74 (2017). When the district court denies relief on procedural grounds, the prisoner must demonstrate both that the dispositive procedural ruling is debatable and that the motion states a debatable claim of the denial of a constitutional right. *Gonzalez v. Thaler*, 565 U.S. 134, 140-41 (2012) (citing *Slack v. McDaniel*, 529 U.S. 473, 484 (2000)). We have independently reviewed the record and conclude that Rogers has not made the requisite showing. Accordingly, we deny Rogers' motion for a certificate of appealability and dismiss the appeal in part.

Rogers also appeals from the district court's order construing his Fed. R. Civ. P. 60(b) motion for relief from judgment as an unauthorized, successive 28 U.S.C. § 2255 motion and dismissing it for lack of jurisdiction.\* Our review of the record confirms that the district court properly construed Rogers' Rule 60(b) motion as a successive § 2255

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\* A certificate of appealability is not required to appeal the district court's jurisdictional categorization of a Rule 60(b) motion as an unauthorized, successive § 2255 motion. *United States v. McRae*, 793 F.3d 392, 400 (4th Cir. 2015).

motion over which it lacked jurisdiction because he failed to obtain prefiling authorization from this court. *See* 28 U.S.C. §§ 2244(b)(3)(A), 2255(h); *McRae*, 793 F.3d at 397-400. Accordingly, we affirm the district court's order.

Consistent with our decision in *United States v. Winestock*, 340 F.3d 200, 208 (4th Cir. 2003), we construe Rogers' notice of appeal and informal brief as an application to file a second or successive § 2255 motion. Upon review, we conclude that Rogers' claims do not meet the relevant standard. *See* 28 U.S.C. § 2255(h). We therefore deny authorization to file a successive § 2255 motion.

We dispense with oral argument because the facts and legal contentions are adequately presented in the materials before this court and argument would not aid the decisional process.

*AFFIRMED IN PART,  
DISMISSED IN PART*